

STATE OF MICHIGAN  
COURT OF APPEALS

---

STRATFORD SQUARE PHASE II,

Plaintiff-Appellee,

v

ATLANTIC MANAGEMENT CORP.,

Defendant-Appellant.

---

UNPUBLISHED

August 12, 2003

No. 238971

Genesee Circuit Court

LC No. 98-062313-CZ

Before: Donofrio, P.J., and Bandstra and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment entered in favor of plaintiff following a jury trial. We affirm.

On appeal, defendant argues that the jury’s damages award was not supported by the evidence.<sup>1</sup> Defendant first argues that the trial court erred in denying its motion for a new trial based on an excessive jury verdict. We disagree. Whether to grant a new trial is within the trial court’s discretion, and the trial court’s decision is reviewed for a palpable abuse of discretion. *Setterington v Pontiac General Hospital*, 223 Mich App 594, 608; 568 NW2d 93 (1997). A new trial may be granted on the basis of an excessive verdict if the damages award was clearly excessive. MCR 2.611(A)(1)(c); *Craig v Oakwood Hospital*, 249 Mich App 534, 566-567; 643 NW2d 580 (2002) (Cooper, J, concurring).

---

<sup>1</sup> In its reply brief on appeal, defendant raises a new issue, i.e., that the trial court erred in terminating the management contract between plaintiff and defendant. MCR 7.212(G) provides that, “[r]epley briefs must be confined to rebuttal of the arguments in the appellee’s or cross-appellee’s brief . . . .” Neither plaintiff’s nor defendant’s briefs on appeal advance an argument concerning the propriety of the trial court’s decision to terminate the management contract. Therefore, defendant’s reply brief violates MCR 7.212(G) because it is not limited to arguments raised in plaintiff’s brief. Hence, we will not consider defendant’s argument that the trial court erred in terminating the management contract between plaintiff and defendant. MCR 7.212(G); *Check Reporting Services, Inc v Michigan Nat’l Bank*, 191 Mich App 614, 628; 478 NW2d 893 (1991).

Defendant was the property manager for the Stratford Square Apartment Complex, which consists of two phases. Defendant owns Phase I and plaintiff owns Phase II. Plaintiff filed a breach of contract action against defendant alleging a breach of the management contract between the parties, and seeking damages for the breach and to have the management agreement terminated. The jury awarded plaintiff \$63,675.42 in damages after finding that defendant breached the management contract.

During trial, plaintiff offered the following evidence on the issue of damages: that defendant inappropriately billed plaintiff for various items from April 1997 through April 1998 including, \$424.97 for paint, \$297, \$799, \$383.92, and another \$383.92 in accountant's fees; that defendant inappropriately charged plaintiff for legal fees relating to the management of Phase I in the amounts of \$47, \$238, \$458, \$130, \$124.90, and \$3,187.15; that defendant wrote a check on plaintiff's account for \$16,135.43 to a law firm for legal expenses plaintiff did not direct defendant to incur; that defendant wrote a check on plaintiff's account to a law firm in the amount of \$5,591.25 in December 2000; and that defendant wrote additional checks totaling \$38,726.74 on plaintiff's account for legal expenses defendant incurred.

Defendant's president testified that the sums of \$16,135.43 and \$38,726.74 were erroneously included as accrued expenses for which defendant sought repayment from plaintiff. He further testified that, although these amounts were listed as accrued expenses, these amounts were never paid out of plaintiff's account or that these amounts were repaid to plaintiff. Defendant's president claimed that defendant's September 2000 expense report showed that defendant wrote a check to plaintiff in the amount of \$53,901 for legal fees and inspections. Defendant's president could not, however, show whether repayment for either the \$16,135.43 check or the \$38,726.74 check was included as part of the \$53,901 repayment check that defendant wrote to plaintiff.

Plaintiff also introduced checks into evidence that defendant wrote on plaintiff's account payable to defendant. Plaintiff's property manager, Lynn Bodette, testified that defendant never informed plaintiff what these checks were for, despite plaintiff's repeated requests for this information, and that these checks totaled \$34,000. Evidence indicated that defendant advanced plaintiff \$34,000 just prior to these checks being written. However, Bodette testified that when these checks totaling \$34,000 were paid to defendant, plaintiff had already paid \$46,000 back to defendant. Therefore, the \$34,000 in checks that defendant wrote to itself on plaintiff's account exceeded the amount defendant advanced plaintiff by \$12,000.<sup>2</sup>

There was conflicting testimony on the issue of damages, particularly on the issue of whether defendant paid for legal services out of plaintiff's account. The trial court was in a

---

<sup>2</sup> Plaintiff also argues that it introduced evidence that defendant's employees embezzled money from plaintiff's bank account and that defendant's employees stole some of plaintiff's equipment. While plaintiff provided evidence to support the occurrence of these events, plaintiff failed to offer a dollar amount related to these factual claims. Therefore, since no amount of damage was introduced, these claims do not support the damages award. Likewise, plaintiff offered evidence that defendant gave preferential treatment to the maintenance and renting out of Phase I, but plaintiff failed to offer evidence detailing damages suffered.

superior position to assess the credibility of the witnesses and due to the fact that this Court grants the trial court deference on issues of witness credibility, *Means v Jowa Security*, 176 Mich App 466, 475; 440 NW2d 23 (1989), we find that defendant has not shown that the trial court clearly abused its discretion in denying defendant's motion for a new trial because defendant has not shown that the jury's damages award was clearly excessive.

Defendant also argues that the trial court erred in denying its motion for JNOV arguing that plaintiff failed to submit evidence sufficient to warrant the jury's damages award. We disagree. In reviewing a trial court's denial of a party's motion for JNOV, this Court views the evidence and all favorable inferences in the light most favorable to the non-moving party. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 469; 606 NW2d 398 (1999). The denial of a motion for JNOV "is reviewed to determine whether the nonmoving party failed to establish a claim as a matter of law." *Id.*

Drawing all inferences in plaintiff's favor, plaintiff presented evidence that defendant inappropriately charged plaintiff a total of \$64,638.47 in legal expenses. We note that plaintiff also offered evidence showing that defendant overcharged plaintiff \$12,000 when paying itself back for an amount defendant claimed to have advanced plaintiff. Therefore, after reviewing the record, we find that plaintiff offered evidence sufficient to warrant a damages award of \$76,638.47. However, the jury awarded plaintiff a lesser amount of \$63,675.42. Because plaintiff submitted evidence sufficient to warrant the jury's damages award, we find that the trial court did not err in denying defendant's motion for JNOV.

Finally, defendant argues that the trial court erred in denying its motion for remittitur. We disagree. A trial court's decision on a motion for remittitur is reviewed for an abuse of discretion. *Settingington, supra*, 223 Mich App 608.

The remittitur inquiry focuses on the conduct at trial and the evidence presented. *Palenkas v Beaumont Hosp*, 432 Mich 527, 532; 443 NW2d 354 (1989). "The only considerations expressly authorized by [a remittitur analysis], however, is whether the jury award is supported by the evidence . . . . [W]e believe its inquiry should be limited to *objective* considerations relating to the actual conduct of the trial or to the evidence adduced." *Id.* As discussed above, plaintiff presented sufficient evidence to sustain the jury's award of \$63,675.42. Therefore, after reviewing the evidence adduced at trial, we do not find that the trial court abused its discretion in denying defendant's motion for remittitur.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Richard A. Bandstra  
/s/ Peter D. O'Connell